

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6870 of 2007()

CRIME NO.346/2005 OF CHATHANNUR POLICE STATION

PETITIONER 2ND ACCUSED:

SREEKUMAR,S/O.LATE SASIDHARAN
ASWATHY BHAVAN, THAZHAM SOUTH,
CHATHANNUR P.O.,

BY ADV. SRI.A.N.RAJAN BABU
SRI.P.GOPALAKRISHNAN (MVA)
SMT.SUNITHA VINOD

RESPONDENTS: RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
2. THE DEPUTY SUPERINTENDENT OF POLICE
KOLLAM.
3. THE CIRCLE INSPECTOR OF POLICE
CHATHANNOOR.
4. THE SUB INSEPCTOR OF POLICE,
CHATHANNOOR.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 13/11/2007 ALONG WITH B.A.NO.6885/2007 AND OTHER CONNECTED
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J
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B.A.Nos. 6870, 6885, 6886
& 6892 of 2007
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Dated this the 13th day of November, 2007

ORDER

The common petitioner in these four bail applications seeks anticipatory bail in four different cases. He faces indictment in these four cases for offences punishable under Section 306 IPC (B.A.No.6870/2007) and under section 138 of the Negotiable Instrument Act (in all the other three cases). The petitioner is employed abroad. Cognizance has been taken in all the four cases. For the prosecution under Sec.306 IPC, cognizance was taken on the basis of a Police report. In the other three cases, cognizance has been taken on the basis of a private complaint. The petitioner has not entered appearance so far. Consequently, coercive processes have been issued by the learned Magistrate. The warrant of arrest issued by the learned Magistrate is chasing the petitioner. He is employed abroad that is why he could not appear before the learned Magistrate. He therefore prays that appropriate directions under Section 438 Cr.P.C and/or 482 Cr.P.C may be issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be issued in favour of a person who apprehends arrest in

execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE